IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

OSA No. 25 of 2000

Date of Decision: May 9, 2007

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H.P State Civil Supplies Corporation & anr. … Appellants

versus.

Rewal Chand Sood & ors. . …Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.
The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Petitioner(s): Mr. Dushyant Dadhwal, Advocate.

For the Respondents) Mr. J.S. Bhogal, Advocate.

Deepak Gupta, J (Ora)

This original side appeal is directed against the judgment and decree of a learned Single Judge of this Court dated August 10, 2000 whereby he has partly decreed the suit of the plaintiffs (defendants herein).

The brief facts of the case are that the plaintiffs are the owners of a three storeyed building at Sanjauli, Shimla. The first floor of this building having an area of 1872 sqr. ft., was let out by the plaintiffs to defendant No.1 (appellant No.1 herein) on rent. No formal agreement was entered into between the parties. However, it was agreed that the rent payable would be as fixed/assessed by the PWD authorities. The case of the plaintiffs was that though the PWD authorities had fixed the rent at Rs. 2286/- per month, the same was not acceptable to the plaintiffs and thereafter the defendants referred the matter to

the Deputy Commissioner on 28.7.1989, who assessed the rent @ 3.50 paise per square feet. The learned Single Judge held that the defendants had themselves approached the Deputy Commissioner and in view of their own acts and conduct, they had agreed to pay the rent as assessed by the Deputy Commissioner. He, accordingly, decreed the suit for a sum of Rs.3,24,545. 80 paise, along with future interest from the date of filing of the suit @ 6% per annum. . The suit was dismissed qua defendant No.2 who was the Area Manager of the defendant - Corporation.

The present appeal has been filed by both the Himachal Pradesh State Civil Supplies Corporation (for short : HPSCS) as well as the Area Manager. As far as appellant No.2 is concerned, since the suit against him was dismissed, no appeal on his behalf could have been filed as he is not an aggrieved party.

The main contention raised in the appeal is that the parties had agreed that the rent would be payable as fixed by the PWD authorities.

According to Mr. Dushyant Dadhwal, the H.P. State Civil Supplies Corporation was only to pay the rent as fixed by the PWD authorities and is not bound to pay the rent as fixed by the Deputy Commissioner. It has further been urged that the appellant No.1 being a Corporation is not bound by the letter dated 30.11.1990 (Ex.DW4/4) sent by its Area Manager. As far as the second contention is concerned, it is to be rejected at the outset. Even the present appeal as stated above was jointly filed by the Corporation as well as the Area Manager. How can the Corporation refuse to accept the acts of its employee? As far as the owner of the building is concerned, he has no concern with the internal management arrangements of the Corporation. This plea is without any merit and is rejected.

On merits, it would be pertinent to note that from the evidence and material on record, it stands proved that the parties had agreed that the premises in question would be let out to the Corporation on rent to be assessed by the

PWD authorities. It is also the admitted position that the defendants took possession of the tenanted premises on 10.7.1987 and paid provisional rent at the rate of Rs.2000/- per month from 10.7.1987 to 31.8.1990 and thereafter at the rate of Rs.3000/- per month from 1.9.1990 till the premises were vacated on 31.3.1994.

It is also not disputed that the PWD authorities did not assess the rent for many years and thereafter the defendant No.2 made a reference to the Deputy Commissioner on 28.7.1989 vide Ex.PW5/1 for assessment of the rent. Another reference was made on 13.11.1990 which is Ex DW4/4. In response to the aforesaid request, the Deputy Commissioner on 12.12.1990 informed the Area Manager of the Corporation that first the rent should be fixed by the PWD authorities. It is only thereafter that the defendants again took up the matter for assessment of the rent with the PWD authorities, who assessed the rent @ Rs.2286/- per month on 9.2.1993 vide Ex.DW1/1. The plaintiffs did not accept this rent. It would be pertinent to mention that the Corporation itself was paying provisional rent at the rate of Rs.3000/-per month from 1990 whereas the assessment was made only in the year 1993. Thereafter, the defendants made another reference to the Deputy Commissioner on 12.8.1993 vide Ex.DW4/D5 for assessing the rent. A perusal of the relevant portion of this order reads as follows:-

> "The owner of the building is not ready to accept the rent according to the assessment made by H.P.Public Works Department.
>
> It is, therefore, prayed that the rent of the accommodation kindly be determined at your kind level at the earliest convenience, so that this office could make the payment of rent accordingly and settle a long outstanding issue with the owner."

Thereafter the Deputy Commissioner assessed the rent vide Ex.PW2/2 at Rs. 3.50 per square feet excluding municipal taxes.

The defendants even prior to the assessment of the rent by the PWD authorities themselves had approached the Deputy Commissioner twice vide letters Ex.PW 5/1 and Ex.DW4/4. The Deputy Commissioner informed the Corporation that the rent be first got assessed from the PWD authorities. The Corporation thereafter got the rent assessed from the PWD authorities. When the plaintiffs raised objections that the rent was not acceptable to them, the Corporation did not take a stand that it would only pay the rent as assessed by the PWD authorities but on the other hand sent a letter Ex.DW4/D/5 wherein it requested the Deputy Commissioner to determine the rent so that the Corporation could make payment of the rent according to such assessment. Once the defendants had clearly submitted itself to the Deputy Commissioner for assessment of the rent, it cannot turn around to say that it is not bound to pay the rent as assessed by the Deputy Commissioner. Willingness and readiness to pay the rent as assessed by the Deputy Commissioner is clearly reflected from the documents Exts. DW/4/D5 and Ex.PW 2/2. If the defendants felt that the they were to pay the rent only as per assessment made by the PWD authorities, they should not have written letters to the Deputy Commissioner nor should they have approached the Deputy Commissioner for assessment of the rent. In fact even after the PWD authorities fixed the rent then also the defendants approached the Deputy Commissioner and therefore, in our opinion, the learned Single Judge has rightly held that the defendants had agreed to pay the rent as assessed by the Deputy Commissioner.

No other point was raised before us.

In view of the above discussion, the appeal is devoid of any merit and the same is accordingly dismissed. No costs.

(Deepak Gupta), J.

May 9, 2007. (Surinder Singh),J.

s.